

**MDR Tracking Number: M5-04-1462-01**

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution –General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 1-23-04.

The IRO reviewed supplies/materials, therapeutic exercises, group therapy rendered from 04-09-03 through 6-19-03 that were denied based upon “U”.

The IRO concluded that analgesic balm was medically necessary. The IRO concluded that therapeutic procedures (97110) and group therapy (97150) were not medically necessary.

The Medical Review Division has reviewed the IRO decision. The IRO has not clearly determined the prevailing party over the medical necessity issues. Therefore, in accordance with §133.308(q)(2)(C), the commission shall determine the allowable fees for the health care in dispute, and the party who prevailed as to the majority of the fees for the disputed health care is the prevailing party.

On this basis, the total amount recommended for reimbursement (\$32.00) does not represent a majority of the medical fees of the disputed healthcare and therefore, the requestor did not prevail in the IRO decision. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On April 19, 2004, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

The following table identifies the disputed services and Medical Review Division's rationale:

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS (Maximum Allowable Reimbursement)	Reference	Rationale
4-9-03	99204	\$120.00	\$0.00	N	\$106.00	Evaluation & Management GR (VI)	Report supports service billed per MFG, reimbursement of \$106.00.
4-9-03	97750MT (2)	\$86.00	\$0.00	F	\$43.00 / body area	Medicine GR (I)(D)(1)(e) and (I)(E)(3)(a – b)	Reimbursement of muscle testing to one body area of \$43.00 is recommended.
4-28-03 5-30-03 8-19-03	99080-73	\$15.00	\$0.00	F	\$15.00	Rule 129.5(d)	<p>Rule 129.5(d) states, “The doctor shall file the Work Status Report:</p> <ol style="list-style-type: none"> <li>(1) after the initial examination of the employee, regardless of the employee’s work status;</li> <li>(2) when the employee experiences a change in work status or a substantial change in activity restrictions; and</li> <li>(3) on the schedule requested by the insurance carrier (carrier), its agent, or the employer requesting the report through its carrier, which shall not to exceed one report every two weeks and which shall be based upon the doctor’s scheduled appointments with the employee.”</li> </ol> <p>TWCC-73 report dated 4-9-03 allowed the claimant to RTW with restrictions.</p> <p>TWCC-73 report dated 4-29-03 allowed the claimant to continue to RTW with restrictions. Restrictions were minimally modified; therefore, reimbursement is not recommended.</p> <p>TWCC-73 report dated 5-30-03 allowed the claimant to continue to RTW with restrictions. Lifting restrictions were</p>

							<p>minimally increased; therefore, reimbursement is not recommended.</p> <p>TWCC-73 report dated 8-19-03 prevented the claimant to RTW; therefore, reimbursement of \$15.00 is recommended.</p>
5-12-03	99070	\$8.00	\$0.00	F	DOP		Analgesic Balm Report supports delivery of service, reimbursement of \$8.00.
4-28-03 5-30-03	99214	\$75.00	\$0.00	N	\$71.00	Evaluation & Management GR (VI) Rule 133.307(g)(3)	Report documents service per MFG, reimbursement is recommended of \$71.00 X 2 = \$142.00.
4-17-03	97110(4)	140.00	\$0.00	F	\$35.00 / 15 min	See Rationale below	See Rationale below. No reimbursement is recommended.
4-28-03 5-30-03	95851	\$40.00	\$0.00	G	\$36.00 ea	Medicine GR (I)(E)(4)	<p>ROM testing is not global to office visit or muscle testing performed on this date. ROM testing is global to an FCE when performed on the same day. See Medicine Ground Rule, (I)(E)(2)(b)(ii) (AA) and (BB).</p> <p>Evaluation, muscle testing and ROM testing are components of FCE. Therefore, components of FCE cannot exceed the MAR for an FCE.</p> <p>ROM reports support delivery of service per MFG, reimbursement of \$36.00 X 2 dates = \$72.00.</p>

4-28-03 5-30-03	97750MT (3)	\$129.00	\$0.00	G	\$43.00 / body area	Medicine GR (I)(D)(1)(e) and (I)(E)(3)(a – b)	<p>Muscle testing is not global to office visit or ROM testing performed on this date. Muscle testing is global to an FCE when performed on the same day. See Medicine Ground Rule, (I)(E)(2)(b)(ii) (AA) and (BB).</p> <p>Evaluation, muscle testing and ROM testing are components of FCE. Therefore, components of FCE cannot exceed the MAR for an FCE.</p> <p>Reimbursement of muscle testing to one per body area. \$43.00 X 2 dates = \$86.00 is recommended.</p>
04-28-03	97750MT (4)	\$172.00	\$0.00	G			<p>Muscle testing is not global to office visit or ROM testing performed on this date. Muscle testing is global to an FCE when performed on the same day. See Medicine Ground Rule, (I)(E)(2)(b)(ii) (AA) and (BB).</p> <p>Evaluation, muscle testing and ROM testing are components of FCE. Therefore, components of FCE cannot exceed the MAR for an FCE.</p> <p>Reimbursement of muscle testing to one per body area. \$43.00 is recommended.</p>
9-23-03	99212	\$41.91	\$27.34	F	\$41.91	MFG effective 8-1-03	The carrier denied additional reimbursement as “The charge exceeds the payment amount for a facility service.” The carrier did not reimburse according to 133.202©(1); therefore, additional reimbursement of \$14.57 is recommended.
TOTAL							The requestor is entitled to reimbursement of <b>\$529.57.</b>

Rationale for 97110:

- a. *Medical Fee* Guideline, Medicine Ground Rules, (I)(A)(9)(b), “Procedures (Supervision by the doctor of HCP, in either a group (97150) or one-to-one (97110-97139) setting, is required).
- b. *Medical Fee* Guideline, Medicine Ground Rules, (I)(A)(11)(a), “Therapeutic procedures (97110) is defined as therapeutic exercise used to develop strength and endurance, range of motion and flexibility. Examples include the use of graded resistance ranging from manual resistance to a variety of equipment including isokinetic, isometric, or isoinertial in one or more planes.”
- c. *Medical Fee* Guideline, Medicine Ground Rules, (I)(C)(9), “If any of the procedures (97110-97139) are performed with two or more individuals, then 97150 is reported.”

Recent review of disputes involving one-on-one CPT code 97110 by the Medical Dispute Resolution section indicate overall deficiencies in the adequacy of the documentation of this code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes “one-on-one.” Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division has reviewed the matters in light all of the Commission requirements for proper documentation. The therapy notes for these dates of service do not support any clinical (mental or physical) reason as to why the patient could not have performed these exercises in a group setting, with supervision, as opposed to one-to-one therapy. The Requestor has failed to submit documentation to support reimbursement in accordance with the 1996 MFG and 133.307(g)(3). Therefore, reimbursement is not recommended.

This Decision is hereby issued this 19<sup>th</sup> day of August 2004

Elizabeth Pickle  
Medical Dispute Resolution Officer  
Medical Review Division

## **ORDER.**

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Decision is applicable for dates of service 4-9-03 through 09-23-03 in this dispute.

This Order is hereby issued this 19<sup>th</sup> day of August 2004.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

### **NOTICE OF INDEPENDENT REVIEW DETERMINATION REVISED 3/23/04**

MDR Tracking Number: M5-04-1462-01  
IRO Certificate Number: 5259

March 12, 2004

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

\_\_\_\_ hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to \_\_\_\_.

Sincerely,

### CLINICAL HISTORY

Patient fractured his left fifth metatarsal when a 200-pound vibrator landed on the lateral aspect of his foot on \_\_\_\_\_. After extensive testing and physical medicine treatment, patient underwent surgical repair.

### REQUESTED SERVICE(S)

Supplies/materials (analgesic balm), therapeutic exercises, group therapy from 04/09/03 through 06/19/03.

### DECISION

Analgesic balm supplies are approved. All other treatments are denied.

### RATIONALE/BASIS FOR DECISION

Based on the medical records submitted, Dr. B's care was medically unnecessary, contraindicated and did not meet the standard of care.

Although the 03/04/04 letter from Dr. B's office stated that the patient's pain rating decreased from 7 at presentation to 4 at the end of care, the medical records conflict with that statement. In actuality, the patient began treatment on 04/11/03 with a pain rating of 4 and regressed to the level of 7 after treatment on 04/23/03. Therefore, the patient did not subjectively improve as a result of the care in question and in fact, got worse. For documentation that the patient subjectively worsened, see the pain ratings for dates of service 04/11/03 (pain rating 4), 04/15/03 (pain rating 5) and 05/05/03 (pain rating 6). That deterioration documents that the care failed to relieve the patient's symptoms and was therefore medically unnecessary. The non-response to care is also documented by the history the patient gave to Dr. C on July 1, 2003 that reads, "He states it's sort of dragging on and it certainly hasn't improved."

Moreover, the patient actually had more pain after treatment than he had before the treatment on 4/16/03, 4/21/03, 04/23/03, 04/25/03, 05/07/03, 05/09/03 and 05/27/03.

The analgesic balm supplies are approved on the sole basis that that Dr. B's treatment (often 8 units of therapeutic exercises to a fractured foot) likely irritated the condition and were thus medically necessary to relieve the patient's subsequent pain.

NOTE: Therapeutic exercises (97110) in excess of four units per visit and group therapeutic procedure (97150) would have been denied since no documentation was submitted to support the medical necessity of two plus hours of treatment.